

Remarks:

Applicant has carefully studied the non-final Examiner's Action mailed 11/02/2005, having a shortened statutory period for response set to expire 02/02/2006, and all references cited therein. The amendment appearing above and these explanatory remarks are believed to be fully responsive to the Action. Accordingly, this important patent application is now believed to be in condition for allowance.

Applicant responds to the outstanding Action by unnumbered paragraphs that correspond to the unnumbered paragraphs employed by the Office, to ensure full response on the merits to each finding of the Office.

The specification has been amended so that all trademarks, such as Kevlar® polyester film material and Mylar® polyester film material are used properly.

Applicant acknowledges the need to use trademarks properly in patent applications.

The amendment filed April 15, 2002 stands objected to under 35 U.S.C. 132 because it introduces new matter into the disclosure. Specifically, the Office contends that the introduction of "an aramid polymer fiber" and "a polyethylene terephthalate polymer film material" are added materials "not supported by the original disclosure."

Applicant has canceled the new matter.

Applicant acknowledges the quotation of 35 U.S.C. § 112, first paragraph.

Claims 1-16 stand rejected under 35 U.S.C. § 112, first paragraph, because said claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor had possession of the claimed invention at the time the application was filed. Specifically, the original disclosure does not support an "impermeable primary tank" or an "impermeable secondary tank." Applicant acknowledges that this is a new matter rejection. Applicant overcomes this rejection by canceling "impermeable primary tank" and "impermeable secondary tank" from claims 1-16.

Claims 4, 5, and 16 stand rejected under 35 U.S.C. 112, first paragraph, because said claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor had possession of the claimed invention at the time the application was filed. Specifically, the original disclosure does not support a "polyethylene terephthalate (PET) polymer film material" which Applicant now recites to represent Mylar nor does it support an "aramid polymer fiber material" which

Applicant now recites to represent Kevlar. Applicant acknowledges that this is a new matter rejection. Applicant meets this ground of rejection by canceling the terms "polyethylene terephthalate (PET) polymer film material" and "aramid polymer fiber material" and instead reciting a high-temperature polyester film material such as Mylar® brand high-temperature polyester film material and Kevlar® brand high-temperature polyester film material as originally disclosed.

Applicant acknowledges the quotation of 35 U.S.C. § 102(b).

Claims 1, 14 and 15 stand rejected under 35 U.S.C. § 102(b) as being anticipated by Sanai et al. (hereinafter "Sanai"). Reconsideration and withdrawal of this ground of rejection is requested for the reasons that follow.

The Office contends that Sanai discloses a luggage container which is structured to store flammable and combustible liquids and which has secondary containment inherently capable of performing as an above ground storage tank. More particularly, the Office contends that the Sanai container includes an inner primary tank 432 formed of a metal and an outer secondary tank 426, also formed of a metal, an insulating foam 430 and a polymer material 428 having inherent fire-resisting characteristics, and wherein the polymer material is sandwiched between the foam 430 and the outer secondary tank. The Office further contends that the container may be used as a tank to provide fuel to a generator and that the container provides a support means to form a base for a generator. This characterization of the Sanai contribution to the art is unfair to Applicant because it is inaccurate and contradicts the Sanai disclosure. For example, the Office characterizes outer secondary tank 426 as being formed of a metal but Sanai discloses that said outer secondary tank 426 is formed of "a flexible, flow-through sheet, preferably having a thin cross-section." (col. 5, lines 47-49). The Sanai outer secondary tank 426 is an "outer pressure mitigation layer" that allows "the detonation products to vent slowly (there)through" (col. 5, lines 52-53). Moreover, outer secondary tank 426 is not a tank at all, but instead is a tube having open ends as recited at lines 49-50 of said column 5. Not made of metal at all, it is in fact made of "a strong, light, high density material such as Kevlar polymeric wool, fiberglass, manila rope, metal or metalized threads, or a plastic such as polypropylene or nylon." (col. 5, lines 59-62). The only reference to metal is in the context of metal threads or metalized threads. The Sanai disclosure of a outer secondary tank made of Kevlar and other porous materials that defines an open-ended tube cannot in fairness be said to anticipate a secondary container made of steel that

defines an enclosure as now claimed by Applicant. Moreover, Sinai further discloses that inner primary tank 432, which the Office characterizes as being formed of a metal, is in fact formed of the same non-metallic, porous material as the outer secondary tank 426. Specifically, at column 6, lines 48-53, Sanai discloses that:

Like the outer pressure mitigation layer 426, the inner pressure mitigation layer 432 is a flexible, flow-through sheet, preferably having a thin cross-section. The inner pressure mitigation layer 432 takes a tubular shape, open at each end...

Applicant's construction, taken from the inside to the outside, includes: 1) an inner enclosure formed of a metal; 2) an insulating foam; 3) a fire-resistant textile material; and 4) an outer enclosure formed of a metal. In contrast, the Sinai structure, from the inside to the outside, includes: 1) an inner tube 432 made of a porous substance; 2) a foam 430; 3) a metal, plastic, or fiberglass layer 428; and 4) an outer tube 426 made of the same porous substance of which inner tube 432 is made. Clearly, the Office's characterization of Sanai would be unfair to Applicant if such characterization were relied upon to support a final rejection.

Applicant acknowledges the quotation of 35 U.S.C. § 103(a).

Claims 1-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over McGarvey in view of Sanai and Silverman et al. (hereinafter "Silverman."). Reconsideration and withdrawal of this ground of rejection is requested because it has already been clearly set forth that Sanai teaches away from the invention. An aggregation of earlier patents that includes Sanai would lead one of ordinary skill away from the claimed invention, not toward it. More particularly, McGarvey has more relevance than does Sanai because McGarvey has an inner tank 11 made of steel and an outer tank 12 made of steel. However, the space between the inner and outer tanks is filled with "thermal barrier material 117" which include "foamed concrete, VERMICULITE, styrofoam, urethane foam, pumice, FENDOLITE, and the like" (col. 3, lines 55-57). FENDOLITE is identified as including a mixture of VERMICULITE and portland cement. (col. 3, lines 60-62). A fire-resistant material 250a is sprayed on the exterior of outer tank 12. A fire-resistant material 250a is sprayed onto the external surface of outer tank 12. Thus, in identifying the materials of which the McGarvey structure is formed, beginning from the inside and working outwardly, we have: 1) steel inner container 11; 2) thermal barrier material 117 in the form of foamed concrete or other foams; 3) steel outer container 12; and 4) a layer 250a of a fire-resistant material. This is in sharp contrast to Applicant's: 1) inner enclosure

formed of a metal; 2) an insulating foam; 3) a fire-resistant textile material; and 4) and an outer enclosure formed of a metal. Only Applicant teaches a foam and a fire-resistant material sandwiched between two steel tanks. McGarvey clearly teaches away from Applicant's contribution. An outward-bound particle impelled by an explosion in Applicant's container will encounter, in sequence, a first steel wall, a foam, a fire-retardant, and a second steel wall. An outward-bound particle impelled by an explosion in McGarvey's container will encounter, in sequence, a first steel wall, a foam, a second steel wall, and a fire-retardant. An outward-bound particle impelled by an explosion in the Silverman construction would encounter, in sequence, a first layer of foam, a fire-resistant polymer film, and a second layer of foam. Such different ordering of barriers is not a mere design choice but instead constitutes an integral part of each inventor's teaching. Each arrangement of parts by each inventor has an effect on the respective abilities of the containers to perform their explosion-suppressing or dissipating function. None suggests the others, especially when the disparate teachings and suggestions of Sanai, McGarvey, and Silverman are aggregated together. Applicant's invention did not arise from any obvious combination of the respective, contradictory teachings of Sanai, McGarvey, and Silverman.

Applicant thanks the Office for fully considering the arguments made September 24, 2004. Applicant no longer relies on said arguments.

A Notice of Allowance is solicited. If the Office is not fully persuaded as to the merits of Applicant's position, or if an Examiner's Amendment would place the pending claims in condition for allowance, a telephone call to the undersigned at (727) 507-8558 is requested. Applicant thanks the Office for its careful examination of this important patent application.

Very respectfully,

SMITH & HOPEN

By:

Ronald E. Smith
Reg. No. 28,761
Suite 220
15950 Bay Vista Drive
Clearwater, FL 33760
(727) 507-8558
Attorneys for Applicant

Dated: February 1, 2006

pc: Mr. Marshall R. Moore

CERTIFICATE OF FACSIMILE TRANSMISSION
(37 C.F.R. 1.8)

I HEREBY CERTIFY that this Amendment D, including Introductory Comments, Amendments to the Specification, Amendments to the Claims, and Remarks, is being transmitted by facsimile to the United States Patent and Trademark Office, Central Fax, Attn: Mr. Stephen J. Castellano, (571) 273-8300 on February 1, 2006.

Dated: February 1, 2006

April Turley